

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

KATHLEEN GUZMAN,)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION NO: 12-CV-12208
NEW ENGLAND COMPOUNDING)	
PHARMACY, INC. d/b/a)	
NEW ENGLAND COMPOUNDING)	
CENTER,)	
)	
Defendant.)	

**DEFENDANT’S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO
EXTEND DEADLINES FOR OPPOSING PLAINTIFF’S MOTION TO REMAND AND
FOR LEAVE TO AMEND IT’S NOTICE OF REMOVAL**

Defendant New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center (“NECC”) moves this Court to extend the deadline for opposing the Plaintiff’s Motion to Remand filed in the above captioned matter. Specifically, NECC is requesting a one (1) week extension to and including December 21, 2012. NECC also requests leave to amend its Removal Petition to state a further ground for this Court’s jurisdiction, based upon 28 U.S.C. § 1332(d).

In further support of the motion, the Defendant states as follows:

1. On or about November 19, 2012, Guzman filed his Complaint against NECC in the Massachusetts Superior Court.
2. Thereafter the Complaint was served on NECC, starting the 30 day period for which a defendant can file a Notice of Removal.
3. The above captioned matter was removed from the Massachusetts Superior Court to this Court on November 29, 2012.

4. On November 30, 2012, Plaintiff filed a Motion to Remand the case to the Massachusetts Superior Court. An opposition to the Motion to Remand is due on December 14, 2012.

5. Earlier this week, this Court ruled on motions to remand filed in two other cases consolidated with the above captioned matter: Schroder v. New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center, et. al. C.A. No. 2012-cv-12075, and Cary v. New England Compounding Center, et. al. C.A. No. 2012-cv-12123, remanding those cases back to Superior Court in Massachusetts.

6. NECC requests this short extension of time in order to properly brief additional arguments that it believes it has in support of this Court's jurisdiction in the Guzman case.

7. This Court has already granted an identical extension in the Armstrong and Thompson cases to this date, and therefore, such an extension should not impede this Court's schedule in any way.

8. Further, there is an anticipated inspection of the facility in the consolidated action, which is to take place next week. Preparation for this inspection by defense counsel has made it difficult to provide proper and full attention to this issue by today's deadline.

9. In light of the Court's earlier remand rulings, NECC wishes to amend its Removal Petition in this case to add an additional ground for this Court's jurisdiction based upon 28 U.S.C. § 1332(d). NECC believes that the relief pleaded in this particular complaint makes it a "mass action" which permits removal based upon this additional ground.

10. "A removal petition may be amended freely within the thirty day period following service of the complaint." *Northern Illinois Gas Co. v. Airco Indus. Gases, A Division of Airco, Inc.*, 676 F.2d 270 (7th Cir. 1982); *Rafter v. Stevenson*, 680 F.Supp.2d 275 (D. Me 2010) (same).

NECC's request for leave to amend is filed within 30 days of its receipt of the Guzman Complaint.

11. These requests are not interposed for delay and Plaintiff will suffer no prejudice by this Court granting this short (one week) extension and by this Court granting NECC leave to amend its Notice of Removal (in the form attached to its motion).

WHEREFORE, the Defendant in the above captioned matter requests that the Court grant an extension up to and including December 21, 2012 for the Defendant to file its opposition to Plaintiff's Motions to Remand and for leave to file an amended Notice of Removal.

Respectfully submitted,

Defendant New England Compounding Pharmacy,
Inc.,

By its Attorneys,

/s/ Geoffrey M. Coan

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Date: December 14, 2012

CERTIFICATE OF SERVICE

I, Geoffrey M. Coan, hereby certify that on this 14th day of December, 2012, the documents filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF)

/s/ Geoffrey M. Coan

Geoffrey M. Coan